

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

Criminal Appeal No.471 Of 1989.

For Approval and Signature.

The Hon'ble Mr.Justice D.G.Karia.

- 1.Whether Reporters of Local Papers may be allowed to see the judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether Their Lordships wish to see the fair copy of judgment?
- 4.Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
- 5.Whether it is to be circulated to the Civil Judge?

ORAL JUDGMENT:

This appeal is directed against the judgment and order dated May 19,1989 passed by the learned Judicial Magistrate, First Class, Dediapada, in Criminal Case No.320/86 acquitting the respondent-accused of the offence punishable under section 7(1)(5) read with section 16(1)(a) of the Prevention of Food Adulteration Act, 1954.

Briefly stated, the prosecution case is that the complainant Food Inspector, P.W.1, Dilipkumar Trambaklal Trivedi visited the shop of the accused on February 28,1986 and purchased the groundnut oil in presence of Panch, Ambalal Parshottamdas Patel. The sample of the said groundnut oil was taken in three separate bottles after following due formalities. The said sample was sent to public analyst for the purpose of analysis. It was found that the sample groundnut oil was adulterated. A complaint was accordingly lodged against the respondent-accused after obtaining necessary sanction from the competent authority.

The accused pleaded not guilty to the charge.

The learned Judicial Magistrate First Class, Dediypada, by the impugned judgment, acquitted the respondent-accused holding, inter alia, that there was clear breach of Rule 14 of the Prevention of Food Adulteration Rules, 1955 and that sanction by the Local Health Authority was not produced and that there was infirmity in the seals of the sample bottles that were sent for analysis.

Mr.M.A. Bukhari, learned Addl. Public Prosecutor, having taken me through the impugned judgment and the relevant evidence and other material on record, contended that the Food Inspector, Dediypada, has in terms deposed that the bottles wherein the sample was taken were transparent and clean. The accused having weighed 125 grams of groundnut oil placed the same in the sample bottles which were packed with dry clean corks. Mr. Bukhari placed reliance on para 4 of the evidence of the Food Inspector and contended that in view of this evidence, the learned Magistrate committed error in holding that the Peon who cleaned the bottles ought to have been examined. It is true that the Food Inspector has deposed about clean and dry bottle wherein the sample of groundnut oil was collected. However, according to the evidence of the Panch witness, in whose presence such sample was said to have been collected, has not supported the prosecution-case at all. The Panch witness, Ambalal Parshottamdas Patel was declared hostile. The Panchnama Exh.38 is not duly proved. The said Panch witness, Ambalal Parshottamdas Patel denied that the sample bottles were clean and dry, transparent, colourless and smellless. Rule 14 of the Prevention of Food Adulteration Rules, 1955 provides manner of sending samples for analysis. Samples of food for the purpose of analysis are to be taken in clean dry-bottles or jars or in other suitable containers, which shall be closed sufficiently tight to prevent leakage or evaporation, and when the evidence of the Food Inspector is contradicted by the evidence of P.W.2, Ambalal Parshottam Patel, Exh.58, it was the duty of the prosecution to examine the Peon who is said to have cleaned the bottles.

Mr. Bukhari has not been able to assail the point of sanction by the Local Health Authority, as no notification with regard thereto was produced by the prosecution.

The Public Analyst was not examined and there was infirmity in the seals of the sample bottles that were received by the Public Analyst. In the facts and circumstances of the case, the prosecution cannot be said to have proved its case beyond reasonable doubt. The learned Magistrate was, therefore, justified in passing the order of acquittal and no case is made out to interfere with the impugned order of acquittal.

In the result, the appeal is dismissed.
